

The Burger Court Opinion Writing Database

Poland v. Arizona

476 U.S. 147 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 1, 1986

85-5023 - Poland v. Arizona
85-5024 - Poland v. Arizona

Dear Byron:
I join.

Regards,


Justice White
Copies to the Conference

MA 7 10 10
OFFICE OF

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1986

MEMORANDUM TO THE CONFERENCE

No. 85-5023) Poland v. Arizona
)
No. 85-5024) Poland v. Arizona

This is to advise you of my votes in the above. You will recall that I did not participate in the discussion at yesterday's Conference.

My vote is to reverse in each case. I view the cases as follows:

In these cases, the trial court originally sentenced petitioners to death after finding that the murders had been committed in an especially cruel manner. The court also noted that a second aggravating circumstance, murder for pecuniary gain, was "not present." On appeal, the Arizona Supreme Court determined that the evidence was insufficient to support the trial court's finding that the murders had been committed in an especially cruel manner. The court also suggested that the trial court had mistakenly rejected the pecuniary gain aggravating circumstance based on a mistaken construction of state law.

The Arizona Supreme Court found the evidence insufficient to support the sole aggravating circumstance the trial court relied

upon in sentencing petitioners to death. Under Burks v. United States and Bullington v. Missouri, this operates as an acquittal barring imposition of the death penalty on retrial. Under Arizona v. Rumsey, the fact that the trial court also committed legal error in rejecting a second aggravating circumstance does not undermine the effect of this acquittal.

Bill

W.J.B., Jr.

M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1986

No. 85-5023) Poland v. Arizona

No. 85-5024) Poland v. Arizona

Dear Thurgood and Harry,

We three are in dissent in the
above. Would you, Thurgood, be willing
to take on the dissent?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

82 MS 11 23-86

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 28, 1986

No. 85-5023) Poland
) v. Arizona
)
) Poland
No. 85-5024) v. Arizona

Dear Thurgood,

Please join me in your dissent in
the above.

Sincerely,



Justice Marshall

Copies to the Conference

Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023
 PATRICK GENE POLAND, PETITIONER
v.
 ARIZONA

85-5024
 MICHAEL KENT POLAND
v.
 ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
 OF ARIZONA

[March —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

The question presented is whether the Double Jeopardy Clause bars a further capital sentencing proceeding when, on appeal from a sentence of death, the reviewing court finds the evidence insufficient to support the only aggravating factor on which the sentencing judge relied, but does not find the evidence insufficient to support the death penalty.

I

In 1977 petitioners Patrick and Michael Poland, disguised as police officers, stopped a Purolator van that was making cash deliveries to various banks in northern Arizona. After removing some \$281,000 in cash from the van, petitioners took the two Purolator guards to a lake and dumped them into the water in sacks weighted with rocks. Autopsies indicated that the most probable cause of the guards' death was drowning, although one may have died of a heart attack. It was not possible to determine if the guards were drugged, but there was no evidence of a struggle.

Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

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ALL TEXT CHANGES THROUGHOUT.
SEE PAGES:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023
PATRICK GENE POLAND, PETITIONER
v.
ARIZONA

85-5024
MICHAEL KENT POLAND
v.
ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

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Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023
PATRICK GENE POLAND, PETITIONER
v.
ARIZONA

85-5024
MICHAEL KENT POLAND
v.
ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1986

MEMORANDUM TO THE CONFERENCE

Case held for No. 85-5023 - Poland v. Arizona

85-121 - Kemp v. Young

Resp asked Flynt, a bank president, for a loan, and Flynt refused. Resp returned with a gun and after arguing with Flynt hit him several times with the butt of the gun and shot him four times at close range. As Flynt lay dying resp took his billfold, apparently on the spur of the moment.

Resp was charged with malice murder, and the prosecutor gave notice that if resp were convicted the State would present evidence of two aggravating circumstances in a presentencing hearing: 1) that the defendant committed the murder during the commission of another capital felony, armed robbery, and 2) that he committed it for the purpose of obtaining money. The jury found resp guilty of malice murder, and imposed the death sentence based on a finding of both of the aggravating factors charged. The jury also found resp guilty of other charges, including armed robbery. The Georgia Supreme Court affirmed.

On federal habeas, resp argued that his counsel was incompetent, and that the evidence failed to support the aggravating circumstances found by the jury. The DC found that petr received effective assistance of counsel at the guilt phase, but not at the penalty phase. The DC then held that the evidence presented at trial, which indicated that resp did not contemplate taking money at the time he assaulted Flynt, was insufficient to support either of the aggravating circumstances on which the jury relied. The DC added: "The court notes, however, that the circumstances of this murder may justify a finding of some other aggravating circumstance, such as aggravated battery." 506 F. Supp. 274, 281 (1980).

Both parties appealed to CALL, which held that resp received ineffective assistance of counsel at the guilt phase. CALL noted but did not specifically pass on the State's contention that the DC erred in holding the evidence insufficient to support the aggravating circumstances charged by the State. Petr App. 56. CALL did, however, rely on the DC's insufficiency-of-the-evidence

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1986

MEMORANDUM TO THE CONFERENCE

Case held for 85-5023 & 85-5024 - Poland v. Arizona;
and 84-1865 - Lockhart v. McCree

Vacate No. 85-5273 - David v. Louisiana

David's double jeopardy claim is that because the La. S.Ct. found the only aggravating factor relied on by his second sentencing jury unconstitutionally vague, he has been "acquitted" of the death penalty. However, neither the second sentencing jury nor the reviewing court found that the State failed to make its case for the death penalty. The La. S.Ct. indicated that while the second sentencing jury only relied on a single, unconstitutional aggravating circumstance (significant prior criminal history) in imposing the death penalty, the evidence presented to that jury was sufficient to support a finding of another, constitutional aggravating circumstance: that the murder was committed during the commission of an armed robbery. State v. David, 468 So.2d 1133, 1137 (1985). The La. S.Ct.'s conclusion that the Double Jeopardy Clause does not bar a new sentencing hearing is consistent with this Court's decision in Poland v. Arizona, No. 85-5023. Accordingly, denial of certiorari is appropriate.

BW

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 25, 1986

Re: No. 85-5023-Patrick Poland v. Arizona
No. 85-5024-Michael Poland v. Arizona

Dear Byron:

In due course, I will circulate a dissent in
this one.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: **APR 25 1986**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023 PATRICK GENE POLAND, PETITIONER
 v.

ARIZONA

85-5024 MICHAEL KENT POLAND
 v.

ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
 OF ARIZONA

[April —, 1986]

JUSTICE MARSHALL, dissenting.

There is one difference between these cases and *Arizona v. Rumsey*, 467 U. S. 203 (1984), in which seven Members of this Court interpreted the Double Jeopardy Clause to bar imposition of a death sentence after a life sentence has been reversed on appeal: the sentencing judge in petitioners' case made two errors of state law, while Rumsey's judge made only one. According to the majority, that makes the difference between life and death.

In *Rumsey*, the defendant was convicted of murder and robbery; the trial judge sentenced him to life imprisonment upon finding that none of the statutory aggravating circumstances provided by Arizona law applied to the defendant's case. One of those aggravating circumstances—murder committed as consideration for pecuniary gain—the court rejected in the belief that it applied only to murders for hire. On appeal, the Supreme Court of Arizona held that murder for pecuniary gain could also include murder in the course of a robbery. Accordingly, it set aside Rumsey's life sentence and remanded for resentencing. This time, Rumsey was

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

Stylistic Changes Throughout
and p. 1

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023 PATRICK GENE POLAND, PETITIONER
v.
ARIZONA

85-5024 MICHAEL KENT POLAND
v.
ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

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Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-5023 AND 85-5024

85-5023 PATRICK GENE POLAND, PETITIONER
v.
ARIZONA

85-5024 MICHAEL KENT POLAND
v.
ARIZONA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

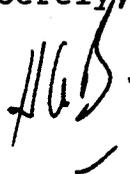
March 28, 1986

Re: No. 84-5023, Poland v. Arizona
No. 84-5084, Poland v. Arizona

Dear Byron:

I shall await the dissent in these cases.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H. White', written in a cursive style. The signature is positioned below the word 'Sincerely,' and above a short horizontal line.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 29, 1986

Re: No. 85-5023) Poland v. Arizona
No. 85-5024) Poland v. Arizona

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 26, 1986

85-5023 Poland v. Arizona

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

(W)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 26, 1986

Re: 85-5023 - Poland v. Arizona
85-5024 - Poland v. Arizona

Dear Byron:

Please join me.

Sincerely,

nm

Justice White

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 25, 1986

Re: 85-5023 - Poland v. Arizona
85-5024 - Poland v. Arizona

Dear Byron:

Please join me.

Respectfully,



Justice White

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 26, 1986

No. 85-5023 Poland v. Arizona
No. 85-5024 Poland v. Arizona

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference

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